

Securing America's Borders Act (SABA)
Section by Section Analysis

TITLE I – BORDER ENFORCEMENT

SUBTITLE A- ASSETS FOR CONTROLLING UNITED STATES BORDERS

Section 101. Enforcement Personnel.

Section 101 authorizes such sums as necessary to recruit, hire, and train 250 new Custom and Border Protection officers, 200 new positions for investigative personnel to investigate alien smuggling, and 250 additional port of entry inspectors, annually from FY 2007 to FY 2011. It also increases the number of customs enforcement inspectors by 200 in section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004. Finally, it authorizes appropriations as necessary for the hiring of 2,400 additional border patrol agents annually for six years – adding an additional 4,400 agents to the border over 6 years to the 10,000 already added by the Intelligence Reform and Terrorism Prevention Act of 2004 (for a total of 14,400 new Border Patrol Agents by 2011).

Section 102. Technological Assets.

Section 202 authorizes such sums as necessary for the acquisition of unmanned aerial vehicles, cameras, poles, sensors and other technologies to achieve operational control of the borders. It also requires the Secretary of DHS and the Secretary of Defense to increase the availability and use of Defense equipment to assist in controlling the borders and submit a report to Congress.

Section 103. Infrastructure.

Section 103 authorizes such sums as necessary to construct all-weather roads and add vehicle barriers along the borders.

Section 104. Border Patrol Checkpoints.

Section 104 authorizes the Secretary to maintain temporary or permanent border patrol checkpoints in close proximity to the southern border.

Section 105. Ports of Entry.

Section 105 authorizes the Secretary to construct additional ports of entry and to make improvements to existing ports of entry along the land borders.

Section 106. Construction of Strategic Border Fencing and Vehicle Barriers.

Section 106 requires DHS, over the next two years, to replace all aged, deteriorating, or damaged primary fencing with double or triple layered fencing in Arizona population centers on the border. The fencing must be extended no less than 2 miles beyond those population centers. This section also requires DHS to construct at least 200 miles of vehicle barriers and all-weather roads in areas that are known transit points for illegal cross border traffic.

SUBTITLE B-BORDER SECURITY PLANS, STRATEGIES AND REPORTS

Section 111. Surveillance Plan.

Section 111 requires the Secretary of DHS to submit a comprehensive plan for the systematic surveillance of the U.S. land and sea borders.

Section 112. National Strategy for Border Security.

Section 112 requires the Secretary of DHS, in consultation with the heads of other appropriate Federal agencies, to develop and submit to Congress a National Strategy for Border Security.

Section 113. Reports on Improving the Exchange of Information on North American Security.

Section 113 requires the Secretary of State, in coordination with the Secretary of DHS and the Secretary of Defense, to submit to Congress a report on improving the exchange of information related to the security of North America, including a description of progress made on security clearances and document integrity, immigration and visa management, visa policy coordination, counterterrorism and terrorist watch lists, and law enforcement cooperation among the United States, Mexico, and Canada.

Section 114. Improving the Security of Mexico's Southern Border.

Section 114 directs the Secretary of State and Secretary of DHS to work with Canada and Mexico to establish a program to assess the needs of Guatemala and Belize in maintaining the security of their borders, and to work with Guatemala and Belize to provide law enforcement assistance to dismantle human smuggling organizations and gain additional control over the border between Guatemala and Belize. It also directs the Secretaries and the Director of the FBI to establish a database to track criminal gang activities in Central America.

SUBTITLE C – OTHER BORDER SECURITY INITIATIVES

Section 121. Biometric Data Enhancements.

Section 121 requires the Secretary of DHS, by October 1, 2007, to enhance the connectivity between the Automated Biometric Fingerprint Identification System (IDENT) and Integrated Automated Fingerprint Identification System (IAFIS) biometric databases and collect all fingerprints from individuals through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program during their initial enrollment.

Section 122. Secure Communication.

Section 122 requires the Secretary of DHS to implement a two-way communication system between Border Patrol agents in the field and their station offices, as well as between appropriate DHS border security agencies at the State, local and tribal law enforcement agencies.

Section 123. Border Patrol Training Capacity Review.

Section 123 requires the Comptroller General to review the basic training provided to new Border Patrol agents to ensure that such training is provided as efficiently and cost effectively as possible.

Section 124. US-VISIT System.

Section 124 requires the Secretary of DHS, in consultation with the heads of other appropriate Federal agencies, to submit to Congress a timeline for equipping all land border ports of entry with the US-VISIT system, deploying at all land border ports of entry the exit component of the US-VISIT system, and making all immigration screening systems interoperable.

Section 125. Document Fraud Detection

Section 125 requires that all immigration inspectors receive training in identifying and detecting fraudulent travel documents and obtain access to the Forensic Document Laboratory. It also requires the Inspector General of DHS to conduct an independent assessment of the accuracy and reliability of the Forensic Document Laboratory and to submit a report to Congress.

Section 126. Improved Document Integrity.

Section 126 requires that immigration-status documents, other than interim documents, issued by DHS be machine-readable, tamper-resistant, and incorporate biometric identifiers by October 26, 2007.

Section 127. Cancellation Of Visas.

Section 127 voids visas held by a nonimmigrant alien if the alien remains in the U.S. beyond the period of authorized stay, and requires aliens who overstay to return to their consulate abroad to undergo additional screening before being able to return to the U.S.

Section 128. Biometric Entry-Exit System.

Section 128 authorizes DHS to collect biometric data from any alien or LPR seeking admission to, exit from, transit through, or paroled into the U.S., and provides that failure to comply with the biometric requirements is a ground for inadmissibility.

Section 129. Border Study.

Section 129 requires the Secretary of DHS to conduct a study and submit a report to Congress on the construction of a physical barrier system along the southern and northern international land and maritime borders of the United States.

Sec. 130: Secure Border Initiative Financial Accountability.

Section 130 requires the Inspector General of the Department of Homeland Security to review all contracts over \$20 million that pertain to the Secure Border Initiative. The IG would have to provide a report to the Secretary on any cost overruns, delays in execution, or mismanagement of these contracts. This section would also require the Secretary of Homeland Security to disclose all contracts with foreign entities on the Secure Border Initiative and the Committee on Foreign Investment in the United States would have to report to Congress on proposed purchases of U.S. port operations by a foreign entity.

TITLE II. INTERIOR ENFORCEMENT

Section 201. Removal and Denial of Benefits to Terrorist Aliens.

Section 201(a) amends the INA so that all aliens inadmissible on terrorism-related grounds are ineligible for asylum.

Section 201(b) expands the class of aliens ineligible on security-related grounds for cancellation of removal. Current law provides that all aliens “inadmissible” and “deportable” on security-related grounds are ineligible; subsection (b) provides that all aliens “described in” those provisions are also ineligible.

Section 201(c) expands the class of aliens ineligible on security-related grounds for voluntary departure. Current law disqualifies from voluntary removal all aliens “deportable” on security-related grounds and because of conviction of an aggravated felony; subsection (c) extends this disqualification to all aliens “described in” those provisions.

Section 201(d) renders ineligible for withholding of removal all aliens “described in” the provisions of the INA rendering aliens inadmissible on terrorism grounds and most of the provisions rendering aliens deportable on terrorism grounds.

Section 201(e) narrows the class of aliens eligible for a record of admission for permanent residence if no such record is otherwise available. Current law requires an alien seeking such a record of admission to prove that he is not “inadmissible” on the grounds of participation in certain Nazi-related activities and certain other activities, and that he is not “deportable” for terrorist activities; subsection (e) requires aliens to prove they are not “described in” those provisions.

Section 201(f) provides that the amendments in this section apply to aliens in removal, deportation, and exclusion proceedings on the date of enactment, and to acts or conditions occurring before, on, or after the date of enactment.

Section 202. Detention and Removal of Aliens Ordered Removed.

Section 202 responds to the Supreme Court’s decision in Zadvydas v. Davis, 533 U.S. 678 (2001). The issue addressed in this section, and in Zadvydas, is what the Government may do if the removal period expires and the Government has not managed to remove the alien.

Section 202(a)(1)(E)-(G) addresses authority to detain beyond the removal period aliens ordered removed who are inadmissible; who are removable as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy; or who have otherwise been determined by the Attorney General to constitute a risk to the community or to be unlikely to comply with the order of removal.

Section 202(a)(1)(E) provides that such aliens may be detained beyond the removal period in the discretion of DHS and without any limitations other than those specified in the statute. Section 202(a)(1)(G) sets forth detailed guidelines for detention following the removal period of the classes of aliens identified above:

- With respect to aliens who have effected entry to the United States and have fully cooperated with the Government’s efforts to carry out removal, DHS may detain such aliens until removal after making one of a variety of certifications.¹ DHS must renew such a certification every six months for as long as it wants to continue detaining the alien. In the absence of a certification, the alien is to be released, although conditions

¹ These include: there is a significant likelihood that the alien will be removed in the reasonably foreseeable future; the alien has a highly contagious disease posing a threat to public safety; release of the alien will have serious adverse consequences for foreign policy or national security; and, under some circumstances, release of the alien will threaten the safety of the community or any person.

may be imposed and re-detention is possible. DHS may not delegate the decision to certify or renew a certification to an officer inferior to the Commissioner of ICE.

- With respect to aliens who have effected an entry to the United States and would be removed but for failure to cooperate fully with removal efforts, DHS may detain them until the alien makes all reasonable efforts to comply with the removal efforts.
- With respect to aliens who have not effected an entry to the United States, DHS is required to follow the guidelines set forth in a specified provision of the CFR.

Section 202(a)(1)(G) authorizes DHS to parole the alien if s/he is an applicant for admission. Finally, it makes judicial review regarding the above paragraphs available only in habeas corpus proceedings after exhaustion of administrative remedies available as of right.

Section 202(a)(1)(A) provides that DHS, not DOJ, oversees detention and removal of aliens ordered removed.

Section 202(a)(1)(B) modifies the definition of one of the three events, the latest of which marks the beginning of the 90-day removal period. Under current law, one of the three events marking the beginning of the removal period is the date of the court's final order, if such a court has stayed the alien's removal so that it can review the removal order. Section 202(a)(1)(B) revises this clause so that the removal period would begin on the expiration of the stay of removal entered by a court, the BIA, or an immigration judge.

Section 202(a)(1)(B) also expands the authority of the Government to extend the removal period beyond 90 days, if the alien fails or refuses to make all reasonable efforts to comply with the removal order or to fully cooperate with DHS's efforts to establish the alien's identity and carry out the removal order.

Finally, Section 202(a)(1)(B) provides that in no event can the 90-day removal period begin until the alien is in DHS's custody. If DHS transfers custody of the alien during the removal period to another Federal, state, or local agency, the removal period is tolled and begins anew when the alien is returned to DHS's custody.

Section 202(a)(1)(C) provides explicit statutory authority for DHS to detain an alien during a stay of removal ordered by a court, the BIA, or an immigration judge, so long as the alien is otherwise subject to an administratively final order of removal.

Section 202(a)(1)(D) addresses the terms under which the alien is to be supervised if s/he has not been removed after the removal period expires to prevent the alien from absconding, to protect the community, or otherwise to enforce the immigration laws.

Section 202(a)(2) provides that the amendments made by Section 202(a)(1) will apply to all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of enactment of the Act.

Section 202(b) amends that portion of title 18 concerning release of a criminal defendant pending trial to establish a rebuttable presumption that no conditions of release will reasonably ensure the appearance of the defendant as required if the judge finds probable cause to believe that the person has no lawful immigration status, is the subject of a final order of removal, or has committed one in a list of immigration offenses.

Section 202(b) also amends that portion of title 18 enumerating the factors that a judge must consider when determining whether there are conditions of release that will reasonably assure the appearance of criminal defendants as required. The subsection provides that the judge shall consider the person's immigration status.

Section 203. Aggravated Felony.

Section 203(a) modifies the definition of the term "aggravated felony." Sections 203(a)(1) and (a)(5) provide that convictions based on the term of imprisonment are covered even if the length of the sentence was based on recidivist or other enhancements.

Section 203(a)(2) broadens the term to include all bringing in and harboring certain aliens crimes.

Section 203(a)(3) broadens the definition to include any felony conviction under INA Section 275 (Improper Entry by an Alien) and Section 276 ("Reentry of Removed Alien"). The current definition covers only crimes under Sections 275(a) and 276 that were committed by an alien previously deported for another aggravated felony. By capturing the rest of Section 275, the definition now includes felony convictions for marriage fraud and immigration-related entrepreneurship fraud, in addition to a much broader swath of offenses for improper entry and reentry themselves.

Section 203(a)(4) expands the definition to include soliciting, aiding, abetting, counseling, commanding, inducing, or procuring another to commit one of the crimes listed already in the definition.

Section 203(b) bars a refugee convicted of an aggravated felony from eligibility for adjustment of status.

Section 203(c) provides that Sections 203(a) and 203(b) apply to acts occurring before, on, or after the date of enactment and to all proceedings in which the alien is required to establish admissibility on or after the date of enactment of the Act.

Section 204. Terrorist Bars.

Section 204(a)(1) provides that no alien shall be found to have "good moral character" for purposes of the INA if DHS or DOJ determines that the alien is described in sections 212(a)(3) (excludable on security or related grounds) or 237(a)(4) (removable on security or related grounds).

Section 204(a)(2) clarifies that the bar against aggravated felons being found to have "good moral character" applies even if the underlying crime was not classified as an aggravated felony

at the time of conviction, and provides waiver authority when the completion of the term of imprisonment and sentence occurred 10 or more years prior to the date of application.

Section 204(a)(3) clarifies that the “catch-all” component of the definition of “good moral character” includes discretionary authority to find an alien lacks good moral character for reasons not enumerated in the definition. The provision also clarifies that this discretionary authority may be based upon the alien’s conduct outside the period during which good moral character is required.

Section 204(b) provides that a petition for granting certain classes of immigrant status may not be granted if there is any proceeding pending that could result in the petitioner’s denaturalization or loss of the petitioner’s lawful permanent resident status.

Section 204(c) clarifies that an alien admitted as a conditional lawful permanent resident must have the condition removed before s/he can be lawfully admitted.

Section 204(d) modifies the law governing judicial review of naturalization decisions. Subsection (d)(1) requires an alien to seek review of the denial of his application for naturalization within 120 days of DHS’s final determination. Subsection (d)(2) imposes on the alien the burden of showing that DHS’s denial was contrary to law. It also removes jurisdiction from the courts, except in proceedings to revoke naturalization, to review or make any determination that an alien is a person of good moral character, understands and is attached to the principles of the Constitution, and is well-disposed to the good order and happiness of the United States.

Section 204(e) bars from being naturalized any alien whom DHS determines to have been at any time an alien described in INA sections 212(a)(3) (excludable on security or related grounds) or 237(a)(4) (removable on security or related grounds).

Section 204(f) provides that neither a court nor DHS may consider a naturalization application while there is pending any proceeding to determine inadmissibility, deportability, or rescission of eligibility for lawful permanent residence, regardless of when the proceeding commenced.

Section 204(g) modifies the circumstances under which an alien may seek judicial review of a pending naturalization application. The subsection limits the district court’s jurisdiction to examining the basis for any delay and remanding to DHS for adjudication. The time after which the alien may seek judicial review is extended to 180 days after DOJ’s examination of the applicant.

Section 204(h) provides that the amendments made by this section will apply to acts occurring before, on, or after the date of enactment and to all applicable cases or matters pending on or filed after the date of enactment of the Act.

Section 205. Increased Criminal Penalties Related to Gang Violence, Removal and Alien Smuggling

Section 205(a)(1) renders inadmissible any alien who a consular officer, DOJ, or DHS knows or has reason to believe is or has been a member of a gang (as defined in Title 18), or who has participated in such a gang's activities knowing or having reason to know that such activities supported the gang's illegal conduct. Section 205(a)(2) renders such aliens deportable as well, though it exempts aliens who were members of a gang only before admission to the country. (DHS and DOJ can waive application of both 205(a)(1) and (a)(2).)

Section 205(a)(3) modifies the rules concerning Temporary Protected Status (TPS). It transfers the authority over TPS from DOJ to DHS; provides DHS with authority to terminate a TPS designation for any reason; permits DHS to extend a country's TPS designation for any amount of time up to 18 months; abolishes the \$50 cap on the TPS registration fee; denies TPS status to any alien who is a member of a gang, or has been at any time after admission; and clarifies that a TPS alien's immunity from detention on the basis of his/her immigration status does not extend to detentions authorized by other provisions of law.

Section 205(b):

- permits the government to penalize for failure to depart those aliens ordered removed because they were inadmissible;
- changes the base penalty for failure to depart to a mandatory minimum of 6 months and a maximum of 5 years, along with a fine.
- changes the penalty for an alien's willful failure to comply with the terms of release under supervision by removing any statutory limit on the fine and adding a mandatory minimum of 6 months and a maximum of 5 years, or 10 years for certain categories of deportable aliens.
- allows the Secretary of Homeland Security to instruct the Secretary of State to deny issuing a visa to any national of a country if that country refuses to accept the return of its nationals. The language only relates to visa issuance, not denial of admission at port-of-entry, ensuring that refugees/asylees are not impacted and that aliens know they will not be admitted before they travel to the U.S.

Section 205(c) strikes and replaces the provision of the INA covering alien smuggling and related offenses. One key purpose of this section is to clarify a provision of the INA that has become confusing and overly complicated after years of piecemeal amendments. But there are substantive changes as well, as the section:

- expands the alien-smuggling crime to cover individuals who "facilitate[], encourage[], direct[], or induce[]" an alien to enter the country at other than a designated port of entry, and to cover those who act with reckless disregard of the alien's unlawful immigration status;
- creates a new crime for transporting or harboring certain aliens in unlawful transit outside the U.S., under circumstances where the alien is seeking to enter the United States unlawfully; and
- criminalizes attempts to encourage or induce an alien to reside or remain in the United States.

Section 205(c) also dispenses with the current penalty scheme for alien smuggling and provides increasing penalties depending on whether the offense was not committed for profit (5 year stat max), if the offense was committed for commercial advantage, profit, or private financial gain (20 year stat max), if the offense was a second or subsequent violation and committed for profit (3 year mandatory minimum, 20 year stat max), if the offense was committed with the intent to further or aid another offense punishable by 1 year or more (5 year mandatory minimum, 20 year stat max), if the offense created a substantial risk of death or serious bodily injury (5 year mandatory minimum, 20 year stat max), if the offense caused serious bodily injury (7 year mandatory minimum, 30 year stat max), if the offense involved an alien who the offender knew or had reason to believe was engaged in terrorist activity (10 year mandatory minimum, 30 year stat max), or if death resulted (10 year mandatory minimum, life maximum). The subsection also provides for extraterritorial federal jurisdiction.

In addition, Section 205(c) clarifies that a religious organization is not guilty of alien smuggling if it provides room, board, travel, and medical assistance to an alien serving as a minister or missionary in a volunteer capacity, provided that the alien has been a member of the religious denomination for at least one year.

Section 205(c) also broadens the crime of hiring unauthorized aliens for employment to include those who knowingly hire in reckless disregard of the alien's unlawful immigration status and increases the maximum penalty to 10 years.

Section 205(c) also expands the forfeiture provisions of the alien-smuggling statute to cover any property used to commit or facilitate a violation of either alien smuggling or hiring of unauthorized aliens, proceeds of such a violation, and property traceable to either of them.

Finally, Section 205(c) simplifies and slightly expands the reach of provisions governing prima facie evidence in the determination of alien smuggling violations; makes two modest changes to the section governing admissibility of videotaped witness testimony to ensure compliance with the Confrontation Clause; and includes new definitions making it clear that for purposes of alien smuggling, an alien is deemed to have crossed the border into the United States regardless of whether the alien is free from official restraint

Section 205(d) adds alien smuggling to the list of crimes during and in relation to which 18 U.S.C. § 924(c) provides a mandatory minimum for carrying or using a firearm.

Section 206. Illegal Entry or Unlawful Presence of an Alien

Section 206 modifies INA Section 275, which currently covers illegal entry.

The new Section 275(a):

- adds a scienter requirement, “knowingly,” to the various improper entry crimes.
- criminalizes an alien’s knowing unlawful presence in the United States;
- clarifies that the unlawful entry crime covers any alien who knowingly crosses the border, even if s/he was under observation at the time;

- provides higher maximum penalties for aliens convicted of illegal entry (and unlawful presence) who have a sufficiently serious criminal record; and
- clarifies that illegal entry and unlawful presence continue until the alien is discovered within the country by an immigration officer.

The new Section 275(b) clarifies that the civil penalties for unlawful entry cover any alien who knowingly crosses the border, even if s/he was under observation at the time.

Section 207. Illegal Reentry.

Section 207 provides higher maximum penalties for aliens convicted of illegal reentry who have a sufficiently serious criminal record. The penalty structure here is similar to that provided for illegal entry and unlawful presence in Section 206.

In addition, this section:

- adds an element to an affirmative defense available to aliens previously denied admission and removed²;
- heightens the standard the alien must meet in order to collaterally attack the underlying removal order under this section; and
- clarifies that the illegal reentry crime covers any alien who knowingly crosses the border, even if s/he was under observation at the time.

Section 208. Reform of Passport, Visa, and Immigration Fraud Offenses.

Section 208 provides a comprehensive rewriting of chapter 75 of title 18, which currently covers Passports and Visas and is amended to cover Passport, Visa, and Immigration Fraud.

The proposed section 1541 creates a new crime for trafficking in passports. Section 1541(a) would punish those who unlawfully produce, issue, transfer, forge, or falsely make passports, as well as those who transact in passports they know to be forged or counterfeited and those who prepare, submit, or mail applications for passports that they know include a false statement. The maximum penalty for these crimes would be 20 years.

Section 1541(b) would punish any individual who knowingly and without lawful authority produced, obtained, possessed, or used various papers, seals, symbols, or other materials used to make passports. This crime also would carry a maximum of 20 years.

The proposed section 1542 modifies the current penalization of false statements in a passport application:

² The element is that, in addition to the existing element that the alien was not required to obtain advance consent to reapply for admission, the alien had complied with all other laws and regulations governing the alien's admissibility.

- for making a false statement in a passport application, modifies the requisite mens rea to “willfully”; removing the requirement that the government show intent to induce or secure the issuance of a passport from the United States; and broadens the crime to cover the passport’s supporting documentation;
- creates a new crime for completing, signing, or submitting a passport application (including supporting documentation), knowing that it contains a false statement or representation;
- creates a new crime for causing (or attempting to cause) the production of a passport by means of any fraud or false application for a U.S. passport, when such production occurs (or would occur) at an authorized facility; and
- creates a statutory maximum of 15 years for all these crimes, replacing the tiered penalty structure under current law.

The proposed section 1543 addresses “Forgery and Unlawful Production of a Passport,” and is analogous to existing section 1543, which covers “Forgery or False Use of a Passport.”:

- for falsely making or counterfeiting a passport, requires that the defendant knowingly counterfeited or falsely made the passport (in contrast to current law, which requires proof that the defendant falsely made or counterfeited a passport with intent that the same may be used);
- for transferring a forged or counterfeited passport, requiring only that the defendant “knowingly” transferred the passport, knowing it to be forged or counterfeited (in contrast to current law, which requires proof that the defendant “willfully and knowingly” furnished such a passport to another);
- for using a forged or counterfeited passport, reducing the mens rea to “knowingly”;
- adding the new crime of knowingly and without lawful authority producing or issuing a passport for or to any person not owing allegiance to the United States;
- adding the new crime of knowingly and without lawful authority transferring a passport to a person for use when such person is not the person for whom the passport was issued or designed; and
- creating a statutory maximum of 15 years for all these crimes, replacing the tiered penalty structure under current law.

The proposed section 1544 covers “Misuse of a Passport,” the same title that section bears under current law. Changes include:

- for using a passport issued or designed for another, reducing the mens rea to “knowingly”;
- for using a passport in violation of applicable rules, reducing the mens rea to “knowingly”;
- expanding the crime of knowing use of a forged or counterfeit passport so that it covers the knowing possession, receipt, purchase, sale, or distribution of such a passport;
- amending the crime for violating the terms and conditions of any duly-obtained safe conduct by adding a mens rea of “knowingly”;

- increasing the maximum penalty for violating the terms of any safe conduct from 10 to 15 years;
- creating a new crime for knowingly using a passport to enter or attempt to enter the country, knowing that the passport is forged or counterfeited;
- creating a new crime for knowingly using a passport to defraud an agency of the United States or a State, knowing that the passport is forged or counterfeited; and
- creating a statutory maximum of 15 years for all these crimes, replacing the tiered penalty structure under current law.

Section 1545 creates new crimes designed to punish schemes to defraud aliens. Section 1545(a) provides a maximum 15-year penalty for anyone who knowingly executes a scheme to defraud any person in connection with any matter arising under the immigration laws or that the offender claims arises under the immigration laws. Section 1545(b) provides a maximum 15-year penalty for anyone who knowingly and falsely represents himself to be an attorney in any matter arising under the immigration laws.

Section 1546, “Immigration and Visa Fraud,” revises and expands the current version of the same section, which is titled, “Fraud and Misuse of Visas, Permits, and Other Documents.” Changes to Section 1546(a) include:

- creating a new crime for knowing use of any immigration document issued or designed for use by another;
- penalizing those who knowingly forge or falsely make any immigrant document (in contrast to current law, which covers only those immigration documents “prescribed by statute or regulation for entry into or as evidence of authorized stay or employment” in the U.S.);
- expanding the crime for false statements in an application for immigration documents by striking the requirement that the statement was made under oath;
- expanding the crime of knowing use of a forged or counterfeit immigration document so that it covers “any immigration document”;
- expanding the same crime so that it covers the knowing possession, receipt, purchase, sale, or distribution of such documents;
- creating a statutory maximum of 15 years for all these crimes, replacing the tiered penalty structure under current law.

Section 1546(b) creates new penalties for trafficking in immigration documents. The covered conduct is analogous to those covered in the proposed section 1541(a), concerning trafficking in passports. Also like the proposed section 1541(a), section 1546(b) provides a maximum penalty of 20 years.

Section 1546(c) creates new penalties analogous to section 1541(b). The new 1546(c) would punish any individual who knowingly and without lawful authority produced, obtained, possessed, or used various papers, seals, symbols, or other materials used to make immigration documents. Like its counterpart, section 1541(b), section 1546(c) would carry a maximum of 20 years.

Section 1547 strengthens the penalties for marriage fraud by:

- increasing the maximum penalty for marriage fraud from 5 years to 10 years;
- providing a new penalty of up to 10 years for those who misrepresent the existence or circumstances of a marriage in immigration documents or proceedings;
- providing a new penalty of up to 20 years for those who enter into multiple marriages in order to evade immigration law;
- providing new penalties of up to 20 years for those who arrange, support, or facilitate multiple such marriages;
- providing that the offenses continue until the fraudulent nature of the marriage is discovered; and
- penalizing attempts and conspiracies in the same manner as a completed violation.
- expanding the penalty for immigration-related entrepreneurship fraud from 5 years to 10 years.

Section 1548 provides that attempts and conspiracies to violate any section of chapter 75 carry the same punishment as a completed violation.

Section 1549 provides for a maximum penalty of 25 years for any violation of this chapter where the actor intends to facilitate an act of international or domestic terrorism, or where s/he knew that the violation would facilitate such an act. It also provides a maximum penalty of 20 years for any violation where the actor intends to facilitate any felony offense against the United States or a State, or where s/he knew that the violation would facilitate such a felony offense.

Section 1550 provides for seizure of property used to commit or facilitate any crime under this chapter, the gross proceeds of such a crime, and property traceable. Section 1551 extends the jurisdiction of U.S. courts to violations of this chapter committed outside the United States in certain circumstances. Section 1552 provides broad venue for the prosecution of false statements in an application for a passport. Section 1553 consists of definitions, and section 1554 clarifies that these amendments are not designed to modify certain tools of law enforcement.

Section 209. Inadmissibility and Removal for Passport and Immigration Fraud Offenses.

Section 209 renders inadmissible and removable any alien convicted of a passport or visa violation under Chapter 75 of title 18. Section 209(c) provides that these amendments apply to proceedings pending on or after the date of enactment.

Section 210. Incarceration of Criminal Aliens.

Section 210(a) authorizes DHS to extend the Institutional Removal Program (IRP), which identifies removable aliens in Federal and State prisons and remove such aliens after completion of their sentences, to all states.

Section 210(b) authorizes States to hold an illegal alien for up to 14 days after completion of the alien's prison sentence in order to effectuate transfer of the alien to Federal custody. Alternatively, the State may issue a detainer allowing such an alien to be detained by the State prison until ICE can take the alien into custody.

Section 210(c) requires the use of technology “to the maximum extent possible” in order to make IRP available in remote locations. Section 210(d) requires reporting on State participation in the IRP or similar programs, and Section 210(e) authorizes appropriations.

Section 211. Encouraging Aliens to Depart Voluntarily.

Section 211(a)(1):

- expands the class of aliens ineligible for voluntary departure to those “described in” Section 237(a)(2)(A)(iii) (aggravated felony) and Section 237(a)(4) (security and related grounds, including terrorist grounds); and
- transfers the power to permit aliens to depart voluntarily in lieu of removal proceedings from the Attorney General to the Secretary of DHS.

Section 211(a)(1) also modifies the procedures for aliens who accept voluntary departure after the beginning, but prior to the completion, of removal proceedings, by:

- offering such an alien only 60 days to depart (in contrast to the 120 days allowed under current law) and allows for aliens who agree to voluntary departure in lieu of removal proceedings under both current law and the INA as amended by this Act)); and
- requiring such an alien to post a voluntary departure bond, to be surrendered upon proof that the alien has left the country within the time specified, which can be waived on presentation of “compelling” evidence that the bond is unnecessary and would present a financial hardship.

Section 211(a)(2) makes one change with respect to aliens permitted to depart voluntarily at the conclusion of removal proceedings: reducing the period in which such an alien must depart from 60 days to 45 days.

Section 211(a)(3) sets forth various new provisions governing voluntary departure agreements, providing that:

- voluntary departure is granted only as part of an affirmative agreement by the alien;
- an alien who accepts voluntary departure after the conclusion of removal proceedings must waive his or her right to any further appeal or petition relating to removal;
- DHS has the authority, in connection with a voluntary departure agreement, to reduce the period of inadmissibility for certain aliens; and
- agreements as to voluntary departure reached during removal proceedings or at the conclusion of removal proceedings must be presented on the record before the immigration judge, and the judge must advise the alien of the consequences of the agreement.

In addition, Section 211(a)(3) provides that the failure of the alien to comply with any terms of a voluntary departure agreement renders the alien automatically ineligible for the benefits of that agreement, subject to civil penalties already authorized by the INA, and subject to an alternate order of removal. Moreover, if the alien agrees to voluntary departure but later files a timely appeal, such an appeal voids the agreement and renders the alien ineligible for voluntary departure while s/he remains in the country.

Finally, Section 211(a)(3) provides that unless expressly agreed to by DHS, an alien who has agreed to voluntary departure shall not have the period allowed for such departure tolled or otherwise affected by any motion, application, or other legal petition.

Section 211(a)(4) provides penalties for an alien's failure to comply with a voluntary departure agreement: an automatic \$3,000 fine; ineligibility for certain forms of relief as long as the alien remains in the country and for 10 years thereafter; and ineligibility to reopen a final order of removal, except to apply for withholding of removal or protection under the Convention Against Torture.

Section 211(a)(5) provides that all aliens previously permitted to depart voluntarily are ineligible for a second or subsequent voluntary departure agreement. This subsection also transfers the power to issue regulations limiting eligibility for voluntary departure in lieu of removal proceedings from the Attorney General to the DHS Secretary, and provides the DHS Secretary authority concurrent with the Attorney General's to issue regulations limiting eligibility for voluntary departure in other circumstances.

Section 211(a)(6) removes jurisdiction from the courts to stay, toll, or otherwise affect the period allowed for voluntary departure.

Section 211(b) authorizes the DHS Secretary to promulgate rules to impose and collect penalties for failure to honor a voluntary departure agreement.

Section 212. Deterring Aliens Ordered Removed From Remaining in the U.S. Unlawfully.

Section 212(a) closes a loophole allowing aliens to avoid the bar on reentry by aliens ordered removed by unlawfully remaining in the United States. Specifically, Section 212(a) provides that the bar on admissibility applies to aliens who seek admission "not later than" 5 years (or 10, or 20, as the case may be) after the date of removal, in contrast to the current law's bar on admissibility for aliens who seek admission "within" 5 years (or 10, or 20, as the case may be) of the date of removal.

Section 212(b) renders ineligible for future discretionary relief any alien who absconds after receiving a final order of removal. The bar applies until the alien leaves the United States and for 10 years after. However, Section 213(b) clarifies that such an alien remains eligible for a motion to reopen to seek withholding of removal under certain circumstances.

Section 213. Prohibition of the Sale of Firearms to, or the Possession of Firearms by Certain Aliens.

Section 213(1) prohibits the transfer of firearms and ammunition to an alien by those knowing or having reason to know that the alien is a parolee. Section 214(2) prohibits aliens who are parolees from transporting, possessing, and receiving firearms and ammunition in interstate commerce. Section 214(3) makes several technical corrections.

Section 214. Uniform Statute of Limitations for Certain Immigration, Naturalization, and Peonage Offenses.

Section 214 provides a statute of limitations of 10 years for most immigration crimes under the INA and title 18.

Section 215. Diplomatic Security Services.

Section 215 authorizes Special Agents of the State Department and the Foreign Service to investigate identity theft, document fraud, peonage, slavery, and Federal offenses committed within the special maritime and territorial jurisdiction of the United States.

Section 216. Field Agent Allocation and Background Checks.

Section 216 mandates each State to have at least 40 immigration enforcement agents, and at least 15 service personnel (Secretary may waive requirement for states with smaller populations).

It also requires DHS and DOJ to wait until the completion of background and security checks before granting any immigration-related status or benefit or issuing documentation evidencing such a grant.

Section 217. Denial of Benefits of Terrorist and Criminals.

Section 217 provides that nothing in the INA shall be construed to require any federal agency to grant any application, status, or benefit to an alien who may pose a threat to national security, who is the subject of an investigation under certain circumstances, and for whom background checks have not been completed.

Section 218. State Criminal Alien Assistance Program.

Section 218 directs DHS to reimburse States and units of local government for costs associated with detaining and processing illegal aliens through the criminal justice system.

Section 219. Transportation and Processing of Illegal Aliens Apprehended by State and Local Law Enforcement Officers.

Section 219 requires DHS to provide sufficient transportation and officers to take all illegal aliens apprehended by State and local law enforcement officers into custody for processing at a DHS detention facility.

Section 220. State and Local Law Enforcement of Federal Immigration Laws

Section 220 requires the Secretary of Homeland Security to reimburse state/local police organizations for training required under § 287(g). Under § 287(g), Immigration and Customs Enforcement provides state and local law enforcement with the training and subsequent authorization to identify, process, and when appropriate, detain immigration offenders they encounter during their regular, daily law-enforcement activity.

Section 221. Reducing Illegal Immigration and Alien Smuggling on Tribal Lands.

Section 221 authorizes DHS to award grants to Indian tribes with lands adjacent to international borders who may have been adversely affected by illegal immigration.

Section 222. Alternatives to Detention.

Section 222 directs the Secretary of DHS to study the effectiveness of alternatives to detention, including electronic monitoring and the Intensive Supervision Appearance Program (ISAP).

Section 223. Conforming Amendment.

Section 223 amends the definition of “aggravated felony” so that it covers all penalties for passport, visa, and immigration fraud under chapter 75 of title 18, as amended by Section 208 of this Act.

Section 224. Reporting Requirements.

Section 224(a)(1) and (2) amend the current provisions in INA Section 265 to take account of the transfer of immigration enforcement authority from the Attorney General to DHS.

Section 224(a)(4) adds several new registration requirements to the INA. Section 224(a)(4) makes clear that the Secretary should provide for appropriate coordination and cross-referencing of address information provided by aliens. This section also makes clear that the Secretary can rely on the most recent address provided by an alien to the Secretary for any purpose under the immigration laws as an address to contact the alien, and the Attorney General and the Secretary may rely on the most recent address provided by the alien pursuant to section 239 for purposes of contacting the alien with respect to pending removal proceedings. Section 224(a)(4) makes clear that there is a separate change of address requirement under existing law for aliens who are in pending removal proceedings.

Section 224(b) makes several conforming amendments with respect to related provisions of the INA.

Section 224(c) modifies the penalties provided in section 266(b) of the INA, by providing for an increase in fines (the current \$200 fine has remained unchanged in the more than 50 years since enactment of the INA), and by providing for imprisonment up to 6 months for a second or subsequent violation. Subsection (c)(1) also adds a new paragraph (3) in section 266(b), providing that the Secretary and the Attorney General may take into account, as a negative discretionary factor in evaluating discretionary forms of relief from removal, an alien’s previous failure to comply with section 265. Section 224(c) also amends the penalty provision for aliens who file an application for registration containing a statement known by them to be false, so that it covers the filing of a change of address notice containing a statement known to be false.

Section 225. Mandatory Detention for Aliens Apprehended at or Between Ports of Entry

Section 225 requires that as of October 1, 2006, all aliens attempting to cross the border illegally must be detained until removed, with some exceptions. This provision also requires that in the interim period before October 1, 2006, an alien who is released pending an immigration removal hearing will have to post bond of at least \$5,000.

Section 226. Removal of Drunk Drivers

Section 226 establishes that a third DUI conviction is an aggravated felony and a reason for removal.

Section 227. Expedited Removal

Section 227 mandates the use of expedited removal of illegal aliens who are apprehended within 100 miles of the border or 14 days of unauthorized entry. Additionally, this section amends the

INA to expand the scope of offenses subject to the expedited removal program for incarcerated or deportable aliens and allows DHS to use expedited removal on criminal aliens found in correctional institutions.

Section 228. Protecting Immigrants from Convicted Sex Offenders

Section 228 prohibits certain criminals from sponsoring an alien (e.g. spouse or fiancée) for a green card unless the DHS determines that the sponsor poses no threat to the alien. Specifically, the prohibition would apply to any person convicted of (i) murder, rape or sexual abuse of a minor; (ii) certain crimes related to sexual exploitation of minors; or (iii) an offense that relates to a prostitution business or trafficking.

Section 229. Law Enforcement Authority of States and Political Subdivisions and Transfer to Federal Custody.

Section 229 reaffirms the existing inherent authority of State law enforcement personnel to assist the federal government in enforcing the immigration laws of the United States during the normal course of carrying out their law enforcement duties. It also requires DHS to promptly take aliens apprehended by state and local law enforcement entities into Federal custody. Alternatively, DHS can request that the relevant state or local law enforcement entity temporarily detain the illegal alien or transport them to the point of transfer to Federal custody. Finally, this section mandates that states and localities be fully reimbursed for all reasonable expenses incurred for detention and transportation.

Section 230. Listing of Immigration Violators in the NCIC Database

Section 230 directs ICE to work with the FBI to place information on certain immigration violators into the already existing Immigration Violators File (IVF) of the National Crime Information Center database. The four categories of immigration violators whose information will be entered are: aliens with final orders of removal, aliens under voluntary departure agreements, aliens who have overstayed their authorized period of stay and aliens whose visas have been revoked.

Section 231. Laundering of Monetary Instruments

Section 231 permits those who engage in alien smuggling or the harboring of illegal aliens for financial gain to be prosecuted for money laundering based on the receipt of proceeds from their illegal activity.

Section 232. Severability.

This section is a severability clause.

TITLE III – INCREASED WORKSITE ENFORCEMENT AND PENALTIES

Section 301. – Unlawful Employment of Aliens.

Section 301 amends Section 274A of the Immigration and Naturalization Act.

Subsection (a)(1) prohibits the hiring, recruiting, or referral of any alien with knowledge or with reason to know of the alien's illegal status, as well as the hiring of an individual without complying with the identification and employment documentation verification requirements of

subsection (c) and the Electronic Employment Verification System requirements of subsection (d).

Subsections (a)(2) and (a)(3) bar the continued employment of an unauthorized alien after acquiring knowledge of the alien's illegal status, as well as the use of illegal aliens as laborers through contracts or subcontracts.

Subsection (a)(4) provides that, in a civil enforcement context, if the Secretary determines that an employer has hired more than ten unauthorized aliens within a calendar year, a rebuttable presumption is created that the employer knew or had reason to know that such aliens were unauthorized.

Subsection (a)(5) provides a defense for employers who comply in good faith with the requirements of subsections (c) and (d) and who voluntarily use the Electronic Employment Verification System.

Subsection (b): Order of internal review and certification of compliance

This provision authorizes the Secretary to require, when there is reasonable cause to believe that employers have failed to comply with this section, an employer to certify that it is in compliance with this section, or has instituted a program to come into compliance.

The purpose of this section is to allow the Secretary to obtain an employer's formal assurance that the employer is in fact in compliance with immigration laws or that it has developed a plan to come into compliance with the requirements of this section. The provision allows DHS to rely on an employer's self-assessment and self-certification rather than launching a formal DHS investigation. Within 60 days, the employer is required to certify completion of this review and that it is either in compliance or has instituted a program to come into compliance. At the request of the employer, the Secretary may extend the deadline for good cause.

Subsection (c): Document Verification System

Subsection (c) requires employers hiring, recruiting, or referring employees to take reasonable steps to verify that such employees are authorized to work.

Subsection (c)(1) requires employers to attest under penalty of perjury that they have verified the identity and work authorization status of their employees by examining a document establishing both work authorization and identity (described in (c)(1)(B)) or a document establishing work authorization (described in (c)(1)(C)) and a document establishing identity (described in (c)(1)(D)).

Subsection (c)(1) also establishes the standard of compliance with regard to examination of a document. Section (c)(1)(E) authorizes the Secretary to prohibit or place conditions on the use of documents that do not reliably establish identity or work authorization or which are being used fraudulently to an unacceptable degree.

Subsection (c)(2) describes an employee's obligation to attest in writing to being legally authorized to work and prescribes a penalty for false representations.

Sections (c)(3) and (c)(4) require the employer to retain copies of the attestation form and supporting documentation.

Subsection (c)(5) subjects an employer that fails to comply with the documentation, recordkeeping, and other requirements of subsection (c) to penalties pursuant to subsection (e)(4)(B). As detailed in subsection (e)(4)(B), penalties for paperwork violations are progressive in their severity, depending upon whether the violation is a first, second or third offense.

Subsection (c)(6) provides that nothing in this subsection authorizes the issuance or use of a national identification card.

Subsection (d): Electronic Employment Verification System

Subsection (d)(1) requires the Secretary, in cooperation with the Commissioner of Social Security, to implement an Electronic Employment Verification System (EEVS).

Subsection (d)(2) incorporates existing Basic Pilot program language requiring the Secretary to operate the verification system through a toll-free phone number or other electronic media through which participating employers can make inquiries as to whether individuals are work authorized. This subsection also requires that the Secretary maintain records of inquiries and responses to inquiries, allowing for a robust audit capability. The verification system must provide an initial response within 3 days. Until the employer receives an answer, the employment relationship may continue. If the employer receives a tentative non-confirmation from the verification system, the employee may contest that finding. While the tentative non-confirmation is being contested, the employer may not terminate the employee based on a lack of work authorization.

The system must be designed and operated for maximum reliability, ease of use, and safeguarding against unauthorized disclosure of private information as well as unlawful discriminatory practices. This section requires the SSA Commissioner to establish a system to compare names with SSNs in order to confirm or not confirm their correspondence as well as whether a SSN is authorized for employment, and prohibits the disclosure of SSN information to employers. The section requires the Secretary to establish a system to compare names with alien identification or authorization numbers in order to confirm or not confirm work authorization. This section also requires updating of information for maximum accuracy.

Subsection (d)(3) outline the requirements for employer participation into the System. As a general rule, the verification requirement will apply only to new employees and be rolled out gradually. As of the date of enactment, the Secretary is authorized through notice in the Federal Register to require participation in the EEVS by employers that the Secretary determines to be part of the critical infrastructure, or directly related to the national, or homeland security needs of the United States. Participation of these employers shall apply with respect to both newly hired and currently hired employees.

Two years after the date of enactment of this Act, the Secretary must require employers with more than 5,000 employees to participate in the EEVS. Three years after the date of enactment, the Secretary must require employers with less than 5,000 employees and with more than 1,000

employees to participate in the EEVS. Four years after the date of enactment, the Secretary must require employers with more than 250 employees and less than 1,000 employees to participate in the EEVS. Five years after the date of enactment, the Secretary must require all employers to participate in EEVS.

The Secretary also has the authority to require employers to participate in the EEVS based upon immigration enforcement. Participation of these employers shall apply with respect to their newly hired employees. The Secretary is authorized to waive or delay the participation in EEVS but must provide notice to Congress of such waiver prior to the date such waiver is granted.

Subsection (d)(6) states that any failure to comply with the EEVS's requirements by a shall be treated as a violation of subsection (a)(1)(B)'s prohibition against hiring individuals without complying with this section, including the requirements of subsections (c) and (d). Subsection (d)(6) further provides that such failure to comply shall be treated as presumed violations of subsection (a)(1)(A)'s prohibition against the hiring of unauthorized aliens.

Subsection (d)(7) establishes procedures for employers participating in the EEVS, including provision of identity and work authorization information, presentation of documentation, reliance on documentation, requirements for seeking confirmation or resolving non-confirmations of work authorizations, and consequences of final non-confirmations. This subsection largely incorporates language identical to that contained in the current Basic Pilot statute, in order to allow the current program to be expanded with a minimum of operational disruption.

Subsection (d)(8) protects from civil and criminal liability any person or entity who relies in good faith on information provided through the EEVS confirmation system. This incorporates existing language applicable to the Basic Pilot program authority.

Subsection (d)(9) prohibits use of the EEVS by any Federal agency for any purposes other than enforcement and administration of the immigration laws, the SSA, or the criminal laws.

Subsection (d)(10) authorizes the Secretary to modify the requirements of the EEVS.

Subsection (d)(11) allows the Secretary to establish, require, and modify fees for employers participating in the EEVS. Such fees may be set at a level that will recover the full cost of providing the EEVS to all participants. This provision further provides that fees are to be deposited and remain available as provided in INA sections 286(m) and (n), and that the EEVS is considered an immigration adjudication service under 286(n). This provision also allows the Secretary to modify the frequency or schedule for payment.

Subsection (d)(12) requires that the Secretary submit a report to Congress within one year after enactment on the capacity, integrity, and accuracy of the EEVS.

Subsection (e): Compliance

Subsection (e)(1) requires the Secretary to establish procedures for the filing of complaints and investigation of possible violations.

Subsection (e)(2) ensures that immigration officers have reasonable access to evidence of employers they are investigating. It also authorizes DHS to compel the production of evidence by subpoena and to fine or void any mitigation of penalties available to employers who fail to comply with subpoenas.

Subsection (e)(3) authorizes the Secretary to issue pre-penalty notices to employers when there is reasonable cause to believe the employer has violated this section. It would provide employers a reasonable opportunity to defend their actions and to petition the Secretary for the remission or mitigation of any fine or penalty or to terminate the proceedings. Mitigating circumstances would include good faith compliance and participation in the EEVS. The subsection also sets forth the procedures for the Secretary to follow when making a determination of whether there has been a violation and authorizes the Secretary to mitigate penalties or terminate proceedings in appropriate cases.

Subsection (e)(4) sets forth the civil monetary penalties for unlawfully hiring, recruiting, or referring unauthorized aliens or for continuing to employ an individual who is unauthorized to work, as well as penalties for recordkeeping or verification practice violations.

Subsection (e)(5) provides that an employer may appeal an adverse determination within 45 days of the issuance of the final determination.

Subsection (e)(6) authorizes the Government to file suit in Federal court if an employer fails to comply with a final determination.

Subsection (f): Criminal penalties

Subsection (f) establishes criminal penalties and injunction procedures for employers who engage in a pattern or practice of knowing violations of subsection (a)(1)(A), which prohibit hiring unauthorized aliens, or subsection (a)(2), which prohibits continuing to employ unauthorized aliens after employer is aware or has reason to be aware that the alien is not authorized to work. Such employers can be fined up to \$10,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned up to six months, or both. This subsection further authorizes the Attorney General to bring a civil action requesting such monetary penalties or injunctive relief.

Subsection (g): Prohibition of Indemnity Bonds

Subsection (g) prohibits any employer from requiring prospective employees to post a bond or other security indemnifying the employer against liability arising from the employer's violation of this section. Violation of this prohibition is subject to civil penalties, and amounts obtained in the form of such bonds can be ordered to be deposited in the Employer Compliance Fund authorized by INA § 286(w).

Subsection (h) bars noncompliant employers from eligibility for Federal contracts.

Subsection (i) contains provisions relating to work documentation from DHS and a federal preemption clause applicable to the provisions of this section.

Subsection (j) directs the deposit of funds paid for civil penalties into the employer compliance fund authorized by INA § 286(w).

Section 302. Employer Compliance Fund.

Section 302 establishes an Employer Compliance Fund into which funds derived from civil penalties are to be deposited. The Employer Compliance Fund shall be used for enhancing and enforcing employer compliance with section 274A.

Section 303. Additional Worksite Enforcement and Fraud Detection Agents.

Section 303 authorizes the hiring of additional DHS personnel dedicated to worksite enforcement fraud detection agents

Section 304. Clarification of Ineligibility for Misrepresentation.

Section 304 is a technical change that conforms section 212 to section 274A. This provision closes a loophole in the ground of inadmissibility for falsely claiming U.S. nationality in section 212 of the INA that has been exploited to obtain unauthorized employment and subsequently evade removal.

The employment verification provisions in section 274A of the INA require an employee to certify that (unless claiming work authorized alien status) he is a “citizen or national” of the United States. The Form I-9 uses this formulation. The parallel ground of inadmissibility, although it refers specifically to section 274A verification, only uses the phrase “citizen.” Some aliens have escaped the consequences of their misrepresentations by successfully arguing that a false attestation that one is a “citizen or national” is not covered by the ground of inadmissibility. A false attestation to any form of U.S. nationality should have the same consequences in employment verification or in other circumstances.

TITLE IV – BACKLOG REDUCTION AND VISAS FOR STUDENTS AND ALIENS WITH ADVANCED DEGREES

Section 401. Elimination of Existing Backlogs.

Section 401 reduces visa backlog waiting times by allowing the recapture of unused visa numbers and increases the number of employment-based green cards from 140,000 to 290,000. It also exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-based immigration.

Section 402. Country Limits.

Section 402 increases the per-country limits for family-sponsored and employment-based immigrants are from 7 percent to 10 percent (in the case of countries) and from 2 percent to 5 percent (in the case of dependent areas).

Section 403. Allocation of Immigrant Visas.

The current 480,000 ceiling on family-sponsored immigrants is redistributed among existing family preference categories. Ten percent is allocated to the first preference -- unmarried sons and daughters of U.S. citizens. Fifty percent is allocated to the second preference -- spouses and unmarried sons and daughters of lawful permanent residents, of which seventy-seven percent of

such visas will be allocated to spouses and minor children of lawful permanent residents. Ten percent is allocated to the third preference -- married sons and daughters of U.S. citizens. Thirty percent is allocated to the fourth preference -- brothers and sisters of U.S. citizens.

Section 403 restructures visa number availability to provide additional visas for unskilled workers (who are limited to 5,000/year right now) and other categories where visas have not kept up with demand. The 290,000 ceiling for employment-based immigrant visas is redistributed among the employment-based immigrant visa categories and certain modifications are made to current categories. 15% is allocated to the first preference -- aliens with extraordinary ability, outstanding professors and researchers, and multinational executives and managers. 15% is allocated to the second preference -- aliens holding advanced degrees or having exceptional ability. 35% is allocated to the third preference -- skilled workers and professionals. 5% is allocated to a re-designated fourth preference -- investors. 30% is allocated to a re-designated fifth preference -- other workers performing labor or services (previously included in third preference).

Section 404. – Relief for Minor Children

Section 404 amends the immediate relative category to allow the children of spouses and parents of U.S. citizens to obtain legal status and travel to the United States with their families.

Section 405. Student Visas.

Section 405 extends foreign students' post-curricular Optional Practical Training (and F-1 status) to 24 months. It also creates a new "F-4" student visa for students pursuing an advanced degree candidates studying in the fields of math, engineering, technology or the physical sciences. The new visa would allow eligible students to either to return to their country of origin or remain in the United States for up to one year and seek employment in their relevant field of study. Once such a student received such an offer of employment, the individual would be allowed to adjust status to that of a legal permanent resident once the alien paid a \$1,000 fee and completed necessary security clearances. Eighty percent of this fee would be deposited into a fund for job training and scholarships for American workers, while twenty percent of the fee would go toward fraud prevention.

Section 406. Visas for Individuals with Advanced Degrees.

Section 406 exempts from the numerical cap on employment-based visas aliens with advanced degrees in science, technology, engineering, or math, and has worked in a related field in the US during the 3 year period preceding their application for adjustment of status. It also exempts immediate relatives of aliens who are admitted as employment-based immigrants from the numerical limitations of 203(b). Finally, it increases the available visas numbers for H-1B non-immigrants and provides an exemption from the numerical limitation aliens who have earned advanced degrees in science, technology, engineering, or math. The numerical limitation is also supplemented with a flexible limitation that is set according to demand for foreign high-skilled workers.

Section 407. Medical Services in Underserved Areas.

Section 407 permanently authorizes the current J-1 visa waiver program. Under this program, participating states are allocated 30 J-1 visa waivers, which enables them to waive the 2 year

home residency requirement for medical students and physicians who serve in “medically underserved areas” upon completion of their J-1 program. The program has been reauthorized twice before and is now set to expire on June 1, 2006.

TITLE V-IMMIGRATION LITIGATION REDUCTION

Section 501. Consolidation Of Immigration Appeals.

Section 501 consolidates all INA civil and administrative appeals into the United States Court of Appeals for the Federal Circuit., and increases the number of authorized judgeships in the Federal Circuit by three to 15. The amendments made by this section shall apply to any final agency order or District Court decision entered on or after the date of enactment of this Act.

Section 502. Additional Immigration Personnel.

Section 502 directs the Secretary of Homeland Security to increase annually in FY 2007-2011 the number of investigative personnel investigating immigration violations by not less than 200 and the number of trial attorneys in the Office of General Counsel working on immigration by not less than 100, subject to the availability of appropriations. It also directs the Attorney General to increase annually in FY 2007-2011 the number of litigation attorneys in the Office of Immigration Litigation by not less than 50, the number of Assistant U.S. Attorneys who litigate immigration cases in Federal courts by not less than 50, and the number of immigration judges by not less than 50, subject to the availability of appropriations. Finally, it authorizes appropriations for additional Assistant Federal Public Defenders who litigate Federal criminal immigration cases in Federal court.

Section 503. Board of Immigration Appeals Removal Order Authority.

Section 503 grants the Board of Immigration Appeals (Board) authority to enter an order of removal without remanding to the immigration judge. It also conforms certain terminology to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) by inserting the term “order of removal”, and the term “immigration judge” in place of the term “special inquiry officer,” and expands the situations in which orders of removal are deemed final.

Section 504. Judicial Review of Visa Revocation.

Section 504 provides that the decision to revoke a visa and the removal order predicated on that revocation are not reviewable. Review of a final order of removal, however, is still permitted under 8 U.S.C. § 1252(a)(2)(D) when questions of statutory interpretation or alleged constitutional infirmity arise.

Section 505. Reinstatement of Removal Orders.

Section 505 clarifies that section 241(a)(5) of the INA (8 U.S.C. § 1231(a)(5)) does not require further hearing by an immigration judge in cases in which prior orders of removal are reinstated against aliens who illegally reenter the United States. This provision applies to orders of deportation or exclusion issued in cases initiated before April 1, 1997, and clarifies that the alien’s ineligibility for relief is not dependent on when the alien applied for such relief. This section also provides that reinstatement orders are not reviewable.

Section 506. Withholding of Removal.

Section 506 clarifies an alien's burden of proof with respect to withholding of removal to make it consistent with the standard established for asylum by section 101(a)(3) of the REAL ID Act. Applicants for withholding, who have traditionally borne a higher burden than applicants for asylum, will bear the same burden of proof as applicants for asylum.

Section 507. Certificate of Reviewability.

Section 507 establishes a screening process for aliens' appeals of Board decisions under which appeals of removal orders will be referred to a single judge on the Federal Circuit Court of Appeals. If the alien establishes a prima facie case that the petition for review should be granted, the judge will issue a "certificate of reviewability" allowing the case to proceed to a three-judge panel; otherwise it is dismissed.

Section 508. Discretionary Decisions on Motions to Reopen or Reconsider.

Section 508 revises the statutory provisions relating to motions to reopen and motions to reconsider to state expressly that the Attorney General's decision whether to grant or deny such motions are committed to his discretion, subject to existing statutory exceptions. This section adds a special provision providing for reopening in order to consider withholding of removal or protection under the Convention Against Torture claims in one limited circumstance. These amendments are applicable to all motions to reopen or reconsider filed on or after the date of enactment in any removal, deportation, or exclusion proceeding.

Section 509. Prohibition of Attorney Fee Awards for Review of Final Orders of Removal.

Section 509 abolishes EAJA fee awards in immigration cases for aliens who are removable, except when the Attorney General's or the Secretary's determination regarding removability was not substantially justified.

Section 510. Board of Immigration Appeals.

Section 510 directs the Attorney General to promulgate regulations to require the Board of Immigration Appeals to hear cases in 3 member panels (unless certain conditions are met) and to permit the Board limited authority to issue affirmances without opinion.

TITLE VI – MISCELLANEOUS

Section 601. Technical and Conforming Amendments.